

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re:

Jerome Konopka
Sandra Konopka

Debtor(s).

**OBJECTION TO
CONFIRMATION**

**CASE #: 8-18-77195-ast
CHAPTER 13**

I, Aleksandra K. Fugate, Esq., an attorney duly licensed to practice law in the State of New York and admitted in the Eastern District of New York, affirm the following to be true, under penalty of perjury:

1. I am an attorney with the firm of Woods Oviatt Gilman LLP, attorneys for the Secured Creditor, Wells Fargo Bank, N.A. ("Secured Creditor").
2. Secured Creditor is the Holder of a Note and Mortgage secured by real property commonly known as 2 Hickory Hill Drive, Holtsville, NY 11742; which is identified by the Secured Creditor with a loan number bearing the last four digits of 2296.
3. This Affirmation is submitted for the purpose of objecting to confirmation of the Chapter 13 Plan proposed by Jerome Konopka and Sandra Konopka (the "Debtors").
4. The Debtors proposed Plan fails to provide for payment of pre-petition arrears to Secured Creditor. However, the Proof of Claim filed on behalf of Secured Creditor asserts pre-petition arrears in the amount of \$1,779.58. A copy of said Proof of Claim is attached hereto as Exhibit 'A'.

(This space left intentionally blank.)

WHEREFORE, the Secured Creditor hereby requests by virtue of the foregoing, confirmation of the Debtors proposed Chapter 13 Plan be denied pursuant to 11 U.S.C. §1325.

Dated: December 3, 2018

/s/Aleksandra K. Fugate
Aleksandra K. Fugate, Esq.
Woods Oviatt Gilman LLP
Attorneys for Secured Creditor
700 Crossroads Building
2 State Street
Rochester, NY 14614
855-227-5072

Exhibit A

Fill in this information to identify the case:

Debtor 1 Jerome Konopka

Debtor 2 Sandra Konopka
(Spouse, if filing)

United States Bankruptcy Court for the: Eastern District of New York

Case number 8-18-77195-ast

Read the instructions before filling out this form. Use this form to make a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment. A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571. Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Official Form 410
Proof of Claim

04/16

Part 1: Identify the Claim

1. **Who is the current creditor?** Wells Fargo Bank, N.A.

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?** ☒ No
☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?** **Where should notices to the creditor be sent?**

Wells Fargo Bank, N.A.
Default Document Processing
MAC# N9286-01Y

Where should payments to the creditor be sent? (if different)

Wells Fargo Bank, N.A.
Attention: Payment Processing
MAC# F2302-04C

Federal Rule of
Bankruptcy Procedure
(FRBP) 2002(g)

Name
1000 Blue Gentian Road

Number Street
Eagan MN 55121-7700

City State ZIP Code

Contact phone 800-274-7025

Contact email POCNOTIFICATIONS@WELLSFARGO.COM

Name
1 Home Campus

Number Street
Des Moines IA 50328

City State ZIP Code

Contact phone 800-274-7025

Contact email POCNOTIFICATIONS@WELLSFARGO.COM

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

WF C M G E 1 8 7 7 1 9 5 N Y E 8 8 0 1 2 2 9 6

4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM/DD/YYYY
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: <u>2296</u>
7. How much is the claim?	\$ <u>319,887.63</u> Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as healthcare information. <u>Money Loaned</u>
9. Is all or part of the claim secured?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input checked="" type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: <u>2 HICKORY HILL DRIVE HOLTSVILLE NY 11742-2540</u> Basis for perfection: <u>Recorded Mortgage/Deed of Trust</u> Attach redacted copies of documents, if any that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ <u>319,887.63</u> Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ <u>1,779.58</u> Annual Interest Rate (when case was filed) <u>5.25</u> % <input checked="" type="checkbox"/> Fixed <input type="checkbox"/> Variable <input type="checkbox"/> Fixed with Steps due to loan modification
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. <i>Check all that apply:</i>	Amount entitled to priority
A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____	
	<input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____	
	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____	
	<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____	
	<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____	
	<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____	

* Amounts are subject to adjustment on 4/1/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157 and 3571.

Check the appropriate box:

- ☐ I am the creditor.
☒ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 11/28/2018
MM / DD / YYYY

/s/ Aleksandra K. Fugate, Esq.

Signature

Print the name of the person who is completing and signing this claim:

Name Aleksandra K. Fugate, Esq.

First name Middle name Last name

Title Attorney

Company Woods Oviatt Gilman LLP

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 700 Crossroads Building, 2 State Street

Number Street

Rochester, NY 14614

City State ZIP Code

Contact phone 855-227-5072

Email bkinbox@woodsoviatt.com

Mortgage Proof of Claim Attachment

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See separate instructions.

Part 1: Mortgage and Case Information

Case number:	8-18-77195-asl	Principal balance:	327,344.09	Principal & interest due:	2,181.21	Principal & interest:	2,181.21
Debtor 1:	Jerome Konopka	Interest due:	2,562.14	Prepetition fees due:	86.18	Monthly escrow:	1,365.49
Debtor 2:	Sandra Konopka	Fees, costs due:	86.18	Escrow deficiency for funds advanced:	0.00	Private mortgage insurance:	0.00
Last 4 digits to identify:	2296	Escrow deficiency for funds advanced:	0.00	Projected escrow shortage:	1,365.49	Optional Products:	0.00
Creditor:	See 410 part 1.1	Other:	0.00	Other:	0.00		
Servicer:	Wells Fargo Bank, N.A.	Less total funds on hand:	10,104.78	Less funds on hand:	1,853.30	Total monthly payment:	3,546.70
Fixed accrual/daily simple interest/other:	Fixed Accrual	Total debt:	319,887.63	Total prepetition arrearage:	1,779.58	*Additional changes to the monthly payment amount may be required because interest rate adjustments or escrow requirement changes.	
		*Not to be used for payoff purposes					

Part 5 : Loan Payment History from First Date of Default

Account Activity				How Funds Were Applied/Amount Incurred							Balance After Amount Received or Incurred					
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prin, int & esc past due balance	Amount to principal	Amount to interest	Amount to escrow	Amount to fees or charges	Unapplied funds	Principal balance	Accrued interest balance	Escrow balance	Fees / Charges balance	Unapplied funds balance
09/01/2018				Beginning Balances	09/01/2018		0.00					328,089.91		0.00	6,858.97	0.00
09/01/2018	3,546.70			Monthly payment	09/01/2018	3,546.70						328,089.91		0.00	6,858.97	0.00
09/17/2018				43.62 Late Charge	09/01/2018	3,546.70					43.62			0.00	6,858.97	0.00
09/20/2018			2,000.00	Payment	09/01/2018	3,546.70	0.00	0.00	0.00	0.00		328,089.91		0.00	6,858.97	0.00
09/28/2018			27.02	Interest on Escrow deposit	09/01/2018	3,546.70	0.00	0.00	0.00	27.02		328,089.91		0.00	6,885.99	0.00
10/01/2018	3,546.70			Monthly payment	09/01/2018	7,093.40						328,089.91		0.00	6,885.99	0.00
10/06/2018		1,800.00	1,800.00	Payment	09/01/2018	7,093.40	0.00	0.00	0.00	0.00	1,800.00	328,089.91		0.00	6,885.99	0.00
10/06/2018		-3,546.70	-3,546.70	Payment	09/01/2018	7,093.40	0.00	0.00	0.00	0.00	-3,546.70	328,089.91		0.00	6,885.99	0.00
10/06/2018		3,546.70	3,546.70	Payment	09/01/2018	3,546.70	745.82	1,435.39	1,368.49			327,344.09		0.00	8,251.48	53.30
10/16/2018				42.56 Late Charge	10/01/2018	3,546.70					42.56			0.00	8,251.48	53.30
10/18/2018		1,800.00	1,800.00	Payment	10/01/2018	3,546.70	0.00	0.00	0.00	0.00		327,344.09		0.00	8,251.48	1,853.30
10/24/2018				Bankruptcy Filed	10/01/2018	3,546.70						327,344.09		0.00	8,251.48	1,853.30

Addendum Page

Basis for asserting that the applicable party has the right to foreclose: Debtor(s) executed a promissory note secured by a mortgage, deed of trust, or security deed. The Promissory note is either made payable to creditor or has been duly indorsed. Creditor, directly or through an agent, has possession of the promissory note. Creditor is the original mortgagee or beneficiary or the assignee of the mortgage, deed of trust, or security deed.

Additional Disclaimers (where applicable)

410

Part 2: Question 9-Describe contains the property address and may contain a description for "Other".

410A

Part 1:

Full creditor name cannot be displayed due to space limitation, see 410 part 1.1 for full name.

Part 2:

Principal Balance is from Part 5, Column M as of the Bankruptcy File Date.

Interest Due is the interest due as of the Bankruptcy File Date.

Fees, costs due is from Part 5, Column P as of the Bankruptcy File Date and includes any outstanding fees (i.e. late charges, property inspections) and cost (i.e. attorney costs), also included are corporate advances (i.e. tax, insurance) for non-escrowed loans as of the Bankruptcy File Date. Any fees, costs due that are incurred pre-petition and waived post-petition will not be included.

Escrow deficiency for funds advanced is from Part 5, Column O (if negative balance) as of the Bankruptcy File Date.

Other includes any applicable Private Mortgage Insurance, other Optional Products (i.e. A & H, Life) or Deferred Interest, where applicable, due as of the Bankruptcy File Date. This line was added to ensure transparency.

Less Total Funds on hand is the total of Part 5, Column O (if positive balance) and Q as of the Bankruptcy File Date.

Total Debt not to be used for payoff purposes.

Part 3:

Principal and Interest is the principal and interest portion of Part 5, Column G, as of the Bankruptcy File Date. (If post-petition payments are included as required by Local Rule or practice, this field will include post-petition principal and interest amounts).

Pre-Petition Fees Due is from Part 5, Column P as of the Bankruptcy File Date. Any fees, costs due that are incurred pre-petition and waived post-petition will not be included.

Escrow Deficiency for Funds Advanced is from Part 5, Column O (if negative balance) as of the Bankruptcy File Date.

Projected Escrow Shortage is the Escrow Required from the escrow analysis minus a positive escrow balance as of the Bankruptcy File Date. (If post-petition payments are included as required by Local Rule or practice, this field will include post-petition escrow amounts).

Other includes any applicable Optional Products (i.e. A & H, Life) due as of the bankruptcy file date. This line was added to ensure transparency. (If post-petition payments are included as required by Local Rule or practice, this field will include post-petition Optional Product amounts).

Less Funds on Hand is from Part 5, column Q as of the Bankruptcy File Date.

Part 4:

Optional Products includes any applicable optional products (i.e. A & H, Life) due as of the Bankruptcy File Date. This line was added to ensure transparency.

(*)This disclaimer has been added to the form to explain that the monthly payment amount may change periodically throughout the life of the loan.

Part 5:

If any of the transactions in the loan payment history contain amounts for optional products, the amount for that product will be reflected in either the Contractual payment amount or the Funds Received amount, and will be applied in those amounts. It will also be reflected in column G as described below.

Column G In addition to the items listed, this also includes any past due PMI or optional products (i.e. A & H, Life) amounts, as applicable. Optional product (i.e. A & H, Life) amounts will not be included in columns H-Q due to no appropriate column heading for this type of transaction.

Column J includes taxes, insurance and MIP/PMI as applicable.

Column N will only be populated if the loan is Daily Simple Interest or if Deferred Interest exists on the account.

Column O includes taxes, insurance and MIP/PMI as applicable.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

IN RE:

Case No: 8-18-77195-ast

**JEROME KONOPKA
SANDRA KONOPKA**

**AFFIDAVIT OF
SERVICE BY MAIL**

DEBTOR(S).

I, Andrew W. Davis, being duly sworn, deposes and says: Deponent is not a party to this action, is over 18 years of age, and resides in Rochester, New York. On December 3, 2018 deponent served an Objection to Confirmation upon:

Cooper J Macco
Richard L. Stern, PC
2950 Express Drive South
Suite 109
Islandia, NY 11749

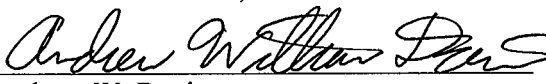
Jerome Konopka
2 Hickory Hill Dr.
Holtsville, NY 11742

Sandra Konopka
2 Hickory Hill Dr.
Holtsville, NY 11742

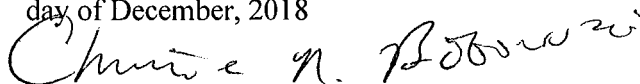
Marianne DeRosa
Standing Chapter 13 Trustee
125 Jericho Tpke Suite 105
Jericho, NY 11753

United States Trustee
Long Island Federal Courthouse
560 Federal Plaza - Room 560
Central Islip, NY 11722-4437

By deposit a true copy, in a postpaid properly addressed envelope, in a post office box under the exclusive care and custody of the United States Postal Service at Rochester, New York


Andrew W. Davis

Sworn to before me this 3rd
day of December, 2018


Notary Public

CHRISTINE N. BOBOWSKI
NOTARY PUBLIC-STATE OF NEW YORK
No. 01806278667
Qualified in Monroe County
My Commission Expires March 25, 2021